

REMARKS

The Office Action dated 01/11/2006, along with the references cited therein, has been carefully reviewed.

The Office Action rejects Claims 35-39, 41, 47-50, and 55-57 based on 35 U.S.C. § 103(a), with Grotz (5,782,865) in view of Stevens (3,579,831) being cited as evidence in support of this rejection.

The Office Action admits that Grotz does not teach the second end of an anchor hole being spaced farther from the patient's bone than the first end of the anchor hole when the anchor body is engaged in the patient's bone. However, the Office Action cites Stevens as teaching the use of an anchor hole having a first end and a second end with the second end being spaced farther from the patient's bone than the first end when the anchor body is engaged in the patient's bone. The Office Action states that the reason for such spacing is to stabilize the anchor in the bone so that as a result of the stabilizing the anchor will be reliably retained in the bone. The Office Action also alleges that the Stevens implant is "in a similar art."

The current response cancels Claims 35-38, 47, 48, 49-50 and 55. Accordingly, the only claims remaining in the case are Claims 39, 41, 56 and 57.

With regard to the independent claims, Claims 39 and 41,

these claims have been amended to specify that the suture passages are oriented at an oblique angle to a plane containing the outer surface of the head which abuts a patient's bone when the anchor is engaged in the bone, and which also extend so as to not intersect the long axis of the anchor body. This limitation is clearly understood from the disclosure of Figure 5B of the application as filed.

The orientation of the suture passages makes it easy for a surgeon to thread sutures through the passages and hence makes the overall surgery easier and more efficient.

Grotz has no disclosure teaching that suture passages should be oriented at an oblique angle to a plane containing one surface of the head of the anchor. The disclosure of Grotz shows suture passages oriented parallel to the outer faces of the head and there is no disclosure in Grotz suggesting that the orientation of the passages should be oblique to the outer faces.

It is observed that the teaching of the Stevens patent cannot be used to cure this lack of teaching, especially applying the Stevens patent in the manner applied in the Office Action. There are several reasons in support of this conclusion.

First, the Stevens device is a bone implant and no sutures are even used or disclosed in this patent. The passages disclosed by Stevens are not suture passages, but are bores which receive

stabilizing pins which are used to stabilize the implant. No mention of sutures is made, nor would sutures be used in this situation because there is no attachment of the device to soft tissue. Still further, the bores of the Stevens device are clearly located, and are intended to be located, beneath the surface of the patient's bone when the device is in use; therefore, there can be no second end of the bores that is "spaced farther from the patient's bone than the first end..." when the device is engaged in the patient's bone. Both ends of the bores in the Stevens device are in the patient's bone, therefore this limitation is not met by the Stevens disclosure. Certainly, since the Stevens device is intended to be implanted in the patient's bone, there is no disclosure in Stevens suggesting that the bores are to be oriented at an oblique angle to a surface of the head of the device that abuts the patient's bone when the device is in place.

Still further, the bores in the Stevens device clearly intersect the long axis of the body. Accordingly, yet another limitation of applicant's claims is not met by the Stevens disclosure.

Still further, there is no teaching in either Grotz or Stevens suggesting that teaching pertinent to dental bone implant could be applied to an anchor for securing soft tissue to a bone.

It would be invention, in and of itself, to apply teaching from a dental bone implant that has no mention whatsoever of soft tissue to a soft tissue anchor. It can only be through a hindsight reconstruction of applicant's invention using applicant's teaching as a guide that such a combination of references could be made. As is well settled, such hindsight reconstruction is not permitted to be a basis of a rejection.

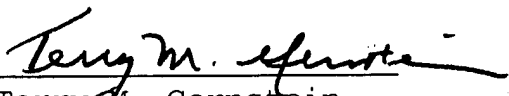
However, since Stevens has no passage which has a second end spaced farther from the patient's bone than a first end when the device is in place in a patient's bone and has passages that clearly intersect the long axis of the body of the device, even erroneously combining the teaching of the Stevens patent with the teaching of the Grotz patent does not meet the limitations set forth in applicant's claims. Even this erroneous combination of references does not suggest suture passages that are oriented at an oblique angle to a surface of a head that abuts a patient's bone when the anchor is in place and which do not intersect the long axis of the body of the anchor and which do not intersect the long axis of the body of the anchor.

Accordingly, even an erroneous and impermissible combination of Grotz and Stevens does not render applicant's claimed invention unpatentable.

Therefore, the claims as presented herein should be allowed.

In view of the foregoing, it is believed that this application is now in condition for allowance. Accordingly, review and allowance are requested.

Respectfully submitted,

  
Terry M. Gernstein

1015 Salt Meadow Lane  
McLean, VA 22101  
(703) 790-5945  
March 30, 2006